

EXHIBIT T

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: **PART: 12**

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ARIE GENDER and ORLY GENDER, in her
individual capacity and on behalf of
THE ORLY GENDER 1993 TRUST,

Plaintiff(s),

-against-

INDEX NO.
651089/10

SAGI GENDER, TPR INVESTMENT ASSOCIATES,
INC., DALIA GENDER, THE SAGI GENDER 1993 TRUST,
ROCHELLE FANG, individually and as trustee
of THE SAGI GENDER 1993 TRUST, GLENCLOVA
INVESTMENT COMPANY, TR INVESTORS, LLC.,
NEW TR EQUITY I, LLC, NEW TR EQUITY II, LLC,
JULES TRUMP, EDDIE TRUMP and MARK HIRSCH,

Defendant(s).

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SAGI GENDER, individually and as assignee of
THE SAGI GENDER 1993 TRUST, and TPR
INVESTMENT ASSOCIATES, INC.,

Cross-Claimants, Counterclaimants
and Third-Party Claimants,

-against-

ARIE GENDER, ORLY GENDER,
GLENCLOVA INVESTMENT COMPANY,
TR INVESTORS, LLC, NEW TR EQUITY I, LLC,
NEW TR EQUITY II, LLC., JULES TRUMP,
EDDIE TRUMP, MARK HIRSCH,
TRANS-RESOURCES, INC., WILLIAM
DOWD, and THE ORLY GENDER 1993 TRUST,

Cross-Claim, Counterclaim and/or
Third-Party Defendants.

-----X

80 Centre Street
New York, New York 10007
March 25, 2015

B E F O R E:

THE HONORABLE BARBARA JAFFE,

J U S T I C E

Eric Allen
Official Court Reporter

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2 THE COURT: So, this is your motion,
3 Ms. Bachman.

4 MS. BACHMAN: It is, your Honor.

5 Good morning.

6 THE COURT: Good morning.

7 MS. BACHMAN: So, this motion has been pending
8 for a long time, so I want to make sure that the Court
9 is aware of sort of the context in which our --

10 THE COURT: What happened in surrogates?
11 Nothing yet from --

12 MS. BACHMAN: It has not -- Dalia is still the
13 trustee. The court has required further proceedings
14 with regard to making sure that the Sagi Trust is
15 included in the matter, so it remains at the status quo
16 that Dalia is still the trustee.

17 THE COURT: Do you know when -- is there any
18 clue as to when that case is going to be decided?

19 MS. BACHMAN: I do not know, your Honor.

20 MR. GRIVER: Your Honor, the only relevant
21 happening, I think, in the case, is that the surrogate
22 court appointed a guardian for the children who are the
23 remainder -- continuing remainderment for the Sagi
24 trust and he filed, I believe last week, position
25 papers saying that he agrees with our position that
26 Dalia should be removed as trustee and that she has

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2 violated her obligations.

3 THE COURT: Okay, but that's not part of the
4 record before me right now.

5 MR. GRIVER: That is -- no. The remainderment
6 for the -- excuse me. The remainderment for the Orly
7 Trust.

8 THE COURT: Yes. That I understand.

9 MR. GRIVER: We can certainly file it with the
10 Court. We think it is a subsequent document that has
11 relevancy to these proceedings if your Honor thinks so.

12 MS. BACHMAN: And, obviously, that issue hasn't
13 been adjudicated and, as the Court noted, is not part
14 of the record.

15 So, with that caveat in mind, I think it is
16 important to understand the context of what's happened
17 here.

18 When we brought this motion, I think, back in
19 August of last year, we had not yet seen the settlement
20 agreement and the Federal Court had not yet opined on
21 the effect that they believed that the settlement
22 agreement had on what Orly gained from the Orly trust
23 shares. So, as part of this motion, I have included
24 Judge Keenan's two decisions which opine and conclude
25 that the settlement agreement is a monetization of
26 Orly's -- the Orly Trust shares. Essentially, she

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2 traded the trust shares as part of the settlement and
3 acknowledged that the Trump Group is the owner --

4 THE COURT: Was it in Keenan's decision or was
5 it Forest's?

6 MS. BACHMAN: I apologize, thank you. Yes,
7 Forest. I could tell by your face that I had gone
8 astray, so I appreciate it.

9 Judge Keenan's decision --

10 THE COURT: No, Judge Forest.

11 MS. BACHMAN: Sorry, Judge Forest's decision.
12 Delete Keenan from the record.

13 So, based on that decision, it is now our
14 understanding with that decision that the settlement
15 agreement was basically the exchange: The Orly Trust
16 interest in the shares for a whole bunch of money.

17 The Trump Group had been consistent before this
18 Court in acknowledging that they viewed the settlement
19 as the settlement of the interest of the Orly Trust
20 shares and that it was an exchange of money for those
21 shares. They effectuated that and acknowledged that by
22 encouraging and asking the Delaware chancery court to
23 dismiss and acknowledge that the shares now belonged to
24 the Trumps.

25 Orly's attorneys have taken somewhat interesting
26 turns along the way. Before this Court, when this

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2 Court was hearing the issue of whether it should so
3 order the settlement, Mr. Griver, I believe, argued
4 that, no, we are not settling the trust claims and, in
5 fact, quote, "Dalia can pick up the cudgel."

6 The Court said in it's decision, look, I can't
7 tell whether the trust shares -- whether the trust
8 claims are dismissed or not as part of the settlement
9 and until I get clarification, you accurately stated, I
10 believe, I cannot tell who the settlement proceeds
11 belonged to. I can't tell whether they belong to the
12 trust or to Orly individually. So, the Court invited
13 the parties to clarify who they viewed as the settling
14 parties and whether the trust had dismissed its claims
15 or not.

16 None of the settling parties acceded to the
17 Court's invitation and with that ambiguity, we were
18 left to protect the interests of the trust. We brought
19 this motion seeking first for Dalia to be substituted
20 in if claims remained since Orly has stepped back and
21 said that she is no longer prosecuting the case as a
22 derivative plaintiff. And under well-settled New York
23 law, if a derivative plaintiff is no longer prosecuting
24 the action on behalf of the principal, then it is
25 appropriate for a party to be substituted who has an
26 actual interest in protecting that principal. That

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2 would be, obviously, the trustee of the trust.

3 Likewise, as a second branch and perhaps now
4 more importantly, we simultaneously moved for the
5 settlement proceeds to be paid into court pending an
6 allocation and determination of who that money belongs
7 to and that's why we are before you today.

8 We now have seen the settlement agreement and it
9 seems to confirm and be consistent with the Trump
10 Group's position that they intended to and did settle
11 all of the claims including, most importantly, the
12 trust claims and at the end of the day that's what they
13 bought and paid for: The trust shares. And if they
14 bought and paid for the trust shares, the money belongs
15 to the trust.

16 Thank you.

17 MR. ALLINGHAM: Your Honor, I don't know who
18 should speak next, but I think it would be helpful I
19 should speak next to make clear submissions.

20 MR. GRIVER: No objection.

21 MR. ALLINGHAM: Tom Allingham for the Trump
22 Group.

23 The settlement agreement settles claims. It
24 doesn't buy shares. The shares had already been
25 purchased as the Delaware court has found, pursuant to
26 an agreement that was entered into back in 2008 and the

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2 closing on those shares was 2012 or '13, '11, whenever.
3 Those shares had been purchased a long time ago. There
4 remained claims of the Orly trust against the Trump
5 Group and that's what was settled in the settlement
6 agreement. We paid money for a release of claims that
7 Arie, Orly and the Orly Trust had against the Trump
8 Group and that's what we paid the money for, so that's
9 point number 1.

10 Point number 2: I think this is an unusual
11 situation, at least in my experience. The moving party
12 now agrees with the position that we've taken since the
13 settlement agreement was entered into in June of 2013
14 that among the claims that we purchased a release of,
15 among the claims that we settled were the claims of the
16 Orly Trust and so the relief that is sought -- there
17 were two forms of relief sought in the motion, as
18 Ms. Bachman said. One was, "I want to intervene to
19 pursue these claims." That form of relief we oppose.
20 Because those claims have now, as conceded, I think, by
21 everybody -- everybody agrees that they were released,
22 there are no claims currently pending and, in fact,
23 there are no claims that could be pending into which
24 Dalia could intervene. So, the motion --

25 THE COURT: There is nothing to --

26 MR. ALLINGHAM: Correct. There is nothing

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2 there, nothing to intervene in, so the motion to
3 intervene should be denied.

4 THE COURT: It's a motion to be substituted.

5 MR. ALLINGHAM: To be substituted. I think of
6 it as an intervention motion, but, yes, your Honor.

7 And I don't think that if you look at the
8 papers, anybody really disputes that. In Dalia's
9 brief, she says it has now been definitively revealed
10 that Orly settled the Orly Trust's claims against the
11 Trump Group. In the Sagi submission, not a brief but
12 an affirmation from Mr. DellaPortas, it's the same
13 thing: "Having finally seen the settlement agreement,
14 it is eminently clear that there is no cudgel for Dalia
15 to pick up. The claims" -- and these are the claims of
16 the Orly Trust -- "were released, as Mr. Allingham had
17 correctly told the Court in his June 2013 letter."

18 So, where does that leave us? That leaves us
19 with the second form of relief, which is should any
20 form of relief be entered against the settlement
21 proceeds that have either -- that have either been paid
22 or may in the future be paid pursuant to the settlement
23 agreement.

24 With respect to the 18 or so million dollars --
25 I think it's actually 17 and a quarter million dollars,
26 but the money that's already been paid in cash, we

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2 don't have it. We have no claim to it. We take no
3 position on that money. The Court may or may not have
4 jurisdiction to enter relief against whoever has got
5 that money, but we don't know who it is. We know who
6 we paid it to, but we don't know who has the money now.

7 With respect to the remaining settlement
8 proceeds that may be paid in the future, that is in the
9 form of two notes; each in the principal amount of 7
10 and a half million dollars.

11 There are a number of conditions that may affect
12 the maturity date of those notes. They have a nominal
13 maturity date of June of 2016 and June of 2017, but
14 they could be accelerated or extended.

15 Also, we have a contractual right to set off any
16 unpaid indemnification amounts under the settlement
17 agreement. In the settlement agreement, we paid not
18 only for releases from Arie, Orly and the Orly Trust,
19 but we also paid -- so that's peace from those three
20 parties -- but we also paid for an indemnification from
21 Arie, Orly and the Orly Trust against any defense
22 costs, settlement payments or judgments in a broad
23 array of actions that could be brought by any Genger
24 family member. So although we couldn't buy complete
25 peace, we tried to buy an insurance policy against the
26 peace that remained out there.

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2 So, we have a setoff right against -- we have a
3 contractual obligation to pay on those notes. When
4 that will come due is determined by a lot of factors.
5 When they come due, we have a contractual right of
6 setoff against the \$15 million face amount of those
7 notes.

8 And so, with respect to the future payments,
9 what I would say is this: No payment is due now, so I
10 think any relief on the future payment would be
11 premature.

12 To the extent any relief were to be entered now
13 as to these future payments, it shouldn't be entered
14 against the Trump Group which has a contractual
15 obligation to pay the payee. It should either be
16 entered in the nature of an in rem remedy against the
17 notes themselves, deliver them to you or whatever, or
18 it should be entered and directed at the payee that
19 we're contractually obligated to pay, rather than to
20 direct it to the Trump Group which would abrogate our
21 contractual obligation to pay under the note.

22 So that's our position.

23 THE COURT: Thank you.

24 MR. ALLINGHAM: Thank you, your Honor?

25 THE COURT: Who is next? You don't have to
26 stand, Mr. Griver.

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2 MR. GRIVER: Thank you, your Honor. I am
3 sometimes better when I stand.

4 A lot of times, this case has become somewhat
5 surreal, but I think this motion takes the cake. There
6 is a museum in Cairo, Egypt called the October War
7 Museum that is dedicated to the proposition that Egypt
8 won the 1973 Yom Kippur war. It looks like a museum.
9 You go in, there are exhibits on the second floor, you
10 can watch a film on the third floor. There is a
11 diorama -- it's really nice. It is a moving diorama,
12 360 degrees, all dedicated to the idea that Egypt won
13 that war; right? Only problem is it's not true.

14 So, you go to someone who is at the museum, you
15 know, a guide and you say, well -- but Egypt lost the
16 war. And he says, no, no, but look at that piece of
17 paper, look at that newspaper article where it says it
18 won. Look at this piece of shrapnel. Look at this
19 tank we captured from the Israelis; all of this proves
20 that we won; right? And you can buy T-shirts and
21 everything and it looks real until you really look at
22 it and you realize that they are only talking about the
23 first day of the war and they completely ignore 99
24 percent of what happened; okay?

25 Mr. Allingham gets up here and says, oh, well,
26 we settled with the Trump -- we settled with the Only

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2 Trust; right? Well, you know what? You have to look
3 at the language of the CSA because the Orly Trust is
4 expressly excluded from the settling parties.

5 Mr. Allingham tried to get the trust claims included
6 and the Orly Trust included --

7 THE COURT: Which Orly entities settled? There
8 is three in all, I take it?

9 MR. GRIVER: No. There is the AG Group settled
10 so the Brosers settled, Arie settled --

11 THE COURT: I don't consider them -- the Orly
12 people are Orly individually, Orly as beneficiary of
13 the trust and the Orly Trust; is that right?

14 MR. GRIVER: Orly settled and it says it right
15 there: Orly Genger in her individual capacity and in
16 her capacity as beneficiary of the Orly Genger 1993
17 trust.

18 THE COURT: And as beneficiary.

19 MR. GRIVER: And as beneficiary.

20 But the Orly Trust itself is expressly excluded
21 from the A.G. Group settling parties and is expressly
22 defined as a member of the nonsettling Sagi Group.

23 THE COURT: Is that your understanding,
24 Mr. Allingham?

25 MR. GRIVER: That is Page 3, by the way.

26 MR. ALLINGHAM: It is, your Honor. That is the

1
2 way the agreement reads.

3 When Justice Feinman in --

4 THE COURT: That's the end of it. So the Only
5 Trust is not settled.

6 MR. GRIVER: That is the language that he signed
7 in exchange.

8 MR. ALLINGHAM: It's more complex than that.

9 MR. GRIVER: You know what else is in that? Any
10 changes to that have to be in writing, agreed to by all
11 the parties, and we don't agree and there is no
12 writing. He is talking about what he wanted and there
13 is also a -- where everything, all prior agreements, et
14 cetera, are merged. There is a merger clause in there,
15 as well.

16 THE COURT: Oh, no, do I perceive another action
17 or motion?

18 MR. GRIVER: No, I don't believe so, your Honor,
19 because here's what also happened. There was a second
20 amended stipulation of dismissal where we crossed out,
21 by hand, because it was mistakenly put in -- crossed
22 out by hand and your Honor was concerned about it and
23 that's why it became the second amended stipulation of
24 dismissal because that language was taken out. And the
25 language that was taken out was any idea that the Only
26 Trust settled the claims as part of that confidential

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2 settlement agreement, the Orly Trust was removed and,
3 indeed, the Orly Trust remained -- the claims of the
4 Orly Trust remained, specifically in that second
5 amended stipulation of dismissal, which allowed the two
6 injunctions -- the injunctions against the Trump Group
7 and the injunctions against everybody else, including
8 Dalia Genger -- to pursue her claims in Delaware --

9 THE COURT: So you agree with Ms. Bachman on
10 that; that the Orly Trust claims remain and --

11 MR. GRIVER: The Orly Trust claims remain --

12 THE COURT: So the only issue remains, of
13 course, whether Dalia should be substituted, which I
14 take it -- but you say the trust claims remained --
15 does everybody agree?

16 MR. GRIVER: No, it remained. The second
17 amended stipulation of dismissal, which dismissed
18 Orly's claims as an individual and as a beneficiary is
19 what happened in this court. As part of that
20 stipulation, the claims of the Orly Trust were not
21 settled -- were not dismissed and Ms. Bachman and Dalia
22 were permitted to reinvigorate a lawsuit in Delaware
23 that they had commenced claiming the right to the
24 shares and go moving against the Trump Group and TPR,
25 et cetera; right?

26 We had gotten those stayed previously because

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2 our concern was that Dalia would not vigorously pursue
3 those claims on behalf of the Orly Trust.

4 Dalia went down to Delaware, immediately settled
5 with TPR and with the Trump Group. Now, if her claims
6 had already been settled two months before, then what
7 was she doing down in Delaware? But she went down to
8 Delaware. She didn't come in at the time and say, hey,
9 wait a second, wait a second, I want my moneys. No.
10 She went down to Delaware, settled with everybody else,
11 TPR and the Trump Group, and it was that settlement
12 that caused the 1st Department to dismiss the claims
13 here because they said there is nothing left because of
14 the Delaware stipulation.

15 So, Dalia has already taken care of it and
16 because of that there are no claims left. The Court of
17 Appeals has so ruled, the 1st Department has so ruled
18 that the fact that we are here arguing about her
19 attempt to substitute herself in when she settled
20 already as a trustee -- she gets one chance to settle.
21 We gave you the Delaware stipulation. That's what she
22 says. She makes findings of fact that are -- that help
23 Sagi. She makes statements that help Sagi and then
24 finally she settles all of her claims on behalf of the
25 trust claiming to properly represent the trust.

26 Now, that's something that we are going to raise

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2 up in the surrogate's court. That is another example
3 of Dalia misusing her power as trustee, but that has no
4 bearing on this. There are no claims left because the
5 Orly trust settled her claims in Delaware and Orly
6 individually and as beneficiary settled the claims with
7 the Trumps in the confidential settlement agreement.

8 The money that they are trying to get now is
9 above the \$10 million that the Delaware settlement
10 caused to be given to TPR and that's the Keenan
11 decision. The Keenan decision was, well, now that the
12 Delaware stipulation exists and the Orly Trust is
13 decided, that everything's okay with the Orly Trust,
14 well, then the sale of the shares back in 2008, the
15 proceeds go to TPR. It's in our papers.

16 THE COURT: I am shaking my head nodding just to
17 the extent that I understand what you are saying.

18 MR. GRIVER: Right, okay.

19 Very simply, Orly settled with the Trumps in
20 June. The Orly Trust settled with the Trumps in
21 August, two months later.

22 Now, we go to -- and the main point, your Honor
23 is there are no claims left and since there are no
24 claims left, her substitution motion just fails. It's
25 that simple.

26 Then we go to the second part of her claim,

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2 which is CPLR 2701. She wants the proceeds of Orly's
3 settlement with the Trumps to be paid into court and
4 she just can't do that. Most attorneys, I think, would
5 simply read the language of the statute to determine
6 that the language of the statute bars their ability to
7 bring a motion and stop right there, but that's not
8 what happened here. What happened here is that they
9 proceeded nonetheless. And the motion to have the
10 proceeds paid in court doesn't work because under CPLR
11 2701, that CPLR provision, your Honor, is designed very
12 narrowly to take care and protect moneys that are the
13 subject of an action. And there are three sub parts.

14 First of all, it has to be the subject of an
15 action. The moneys that are the settlement with the
16 A.G. Group but not the Orly Trust are not part of the
17 2010 case which, in any event, no longer exists.

18 But you can go and look at each one of the
19 individual subparagraphs and see that it doesn't work.

20 The fourth one is if a third party is a trustee
21 and is holding the money, like the comptroller of the
22 -- the State comptroller. The State comptroller has,
23 let's say, death benefits. The person has died. It is
24 claimed both by the beneficiary of the will and by the
25 ex-wife who is named in the policy for the death
26 benefits. They are fighting over that specific sum of

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2 money and the comptroller has to pay it to somebody so
3 he pays it into court on a monthly basis until the
4 court rules does widow A get it or widow B get it.
5 That's clearly not the situation here.

6 The second one is where there are special
7 circumstances that make it desirable that payment be
8 made to -- that payment be made into the court instead
9 of two the parties. Well, as Mr. Allingham correctly
10 noted, some of the money has already been paid, some of
11 the money will be paid and there are no special
12 circumstances here that should delay any of that.
13 There is no evidence that they have come in that said
14 that there is a special circumstance that requires the
15 court to protect the moneys. There is not even a claim
16 against those moneys in a court of law.

17 Third is the situation where ownership of the
18 property will depend on the outcome of the pending
19 action. That also is inapplicable here. There is no
20 pending action, number one. And, number two, even if
21 there was, you can look at all the counterclaims, all
22 of the cross-claims, all of the original claims, none
23 of it has to do with the confidential settlement
24 agreement so it simply does not apply.

25 And it can't serve as a legal basis for what
26 Dalia is attempting to do. She made her own decision

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2 to settle and she settled it as she saw fit; in a way
3 that was destructive to Orly and we'll take care of
4 that later, but in a way that she decided to settle
5 those claims. There is a stipulation in Delaware and
6 they ignore that. They ignore the second amended
7 stipulation of dismissal in this court and what
8 happened -- the fact that they went ahead and then used
9 that stipulation to say, oh, there are still claims for
10 Orly Trust. Now they are claiming that the Orly Trust
11 claims didn't even exist at the time that they went
12 into Delaware and how is that possible? And
13 Mr. Allingham chooses to ignore the actual language of
14 the confidential settlement agreement which he cannot
15 do because he negotiated that language, he chose to
16 have his client sign that language and for him to come
17 in and say well let me explain to you how the language
18 should be ignored is improper, entirely so.

19 So, I am going to sit down and say nothing else.
20 Thank you.

21 MR. MONTCLARE: Thank you, your Honor. Paul
22 Montclare for Arie Genger.

23 I have just a few things to say. I have to say
24 I agree with everything that Mr. Griver said. It's not
25 to have him back in the courtroom.

26 It seems to me that we can address this really

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2 pretty simply. There is no action for her to
3 substitute into. I mean, how can you substitute into
4 an action that's been completely dismissed, has been
5 completely affirmed, there is now no leave-to-appeal
6 motion pending to the Court of Appeals. She is going
7 to be substituted in for Orly who lost the case against
8 the Trumps who are no longer in the case. I mean, that
9 should end the whole analysis. I don't understand why
10 we need to go past that.

11 The issue with respect to the confidential
12 settlement agreement, on behalf of Arie Genger, we were
13 a party to that agreement and they want to come in and
14 interfere with our property rights by just saying, oh,
15 we want it paid into court. What action is there to
16 deprive us of our property rights being brought by --

17 THE COURT: Well, I think what Mr. Griver
18 mentioned in his list of subdivisions of 2701, the only
19 one that piqued any interest was special circumstances,
20 so what about that?

21 MR. MONTCLARE: But there are no -- there has to
22 be an existing action, your Honor. There is no
23 existing action.

24 THE COURT: So that -- you still need an
25 existing action for there to be special circumstances.

26 MR. MONTCLARE: Yes. Otherwise what do we just

1
2 have people walking in off the street and into court
3 and asking for an application to pay it into court?

4 THE COURT: It happens all the time.

5 MR. MONTCLARE: They could have early on tried
6 to get an attachment of that. They could have done a
7 lot of things but the procedural mechanism they have
8 chosen is a little unusual.

9 But it's not grounded in anything. I think --
10 and also, it proceeds from a false assumption of what
11 their -- what they conceded in Delaware, which I am not
12 going to repeat; why we settled with Mr. Allingham's
13 clients in Delaware at a time when there are open
14 issues that made settlement possibility. Much to my
15 great disappointment, that is no longer the case. That
16 case is over against the Trumps. It's over.

17 And the reason she wants to substitute in is to
18 basically to sue the Trumps. And that makes no sense
19 at all to me.

20 THE COURT: Okay, thank you.

21 I think --

22 MR. DELLAPORTAS: Very briefly, your Honor.

23 Three quick points:

24 Number 1, Orly Genger brought claims in this
25 case on behalf of the Orly Genger 1993 Trust.

26 Number 2, Orly Genger and her father got or are

1
2 going to get \$32.3 million in settlement of those
3 claims and, number 3, those claims are no more and we
4 join in Ms. Genger's -- Mrs. Dalia Genger's position
5 that the money should be paid into court.

6 Subject to that, we respectfully disagree with
7 the comments of Mr. Montclare and Mr. Griver, except to
8 the extent that Mr. Griver described the Cairo museum,
9 which I have been to as well and I think it is an
10 accurate description of it.

11 And with that, we rest on our papers.

12 THE COURT: Thank you.

13 MS. BACHMAN: May I add something, your Honor?

14 THE COURT: Sure.

15 MS. BACHMAN: With regard to, I think, the
16 Court's very pointed question to Mr. Griver and
17 Mr. Allingham, who were the settling parties? And I
18 think the Court described, at least conceptually, three
19 possibilities: Orly as beneficiary and Orly
20 individually --

21 THE COURT: Those were settled.

22 MS. BACHMAN: Apparently. Apparently that's
23 what Mr. Griver is saying.

24 THE COURT: Signed, sealed, delivered. You saw
25 the agreement.

26 MS. BACHMAN: I have now seen the agreement.

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2 The mystery party is what happened to the Orly
3 Trust.

4 THE COURT: And that was in Delaware. Kaputski
5 (phonetic) in Delaware; no?

6 MS. BACHMAN: As I understand it, this case was
7 a derivative case presently pending today. That's what
8 Orly described in her complaint, her claims to be. She
9 is bringing this action, quote, "on behalf of the Orly
10 Trust as beneficiary of the Orly Trust to protect her
11 interest thereunder." Her claim, as I understand it --
12 and unfortunately you have had a longer tenure in this
13 than I have -- but as I understand, it were purely
14 derivative claims. I understand that she said in the
15 caption Orly Genger individually and on behalf of the
16 Orly Trust but the real claims were with regard to what
17 was done with the Orly Trust shares. For them to say
18 she settled as a beneficiary and somehow that's
19 different than the trust is a distinction without a
20 difference. If you are a beneficiary, you are, I
21 believe, saying I have a derivative right to sue
22 because the trust is not protecting my interest as the
23 beneficiary.

24 I don't understand how you can split that
25 difference and say, no, the beneficiary is something
26 different than the trust. They have to be merged and

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2 that's what she did in her complaint.

3 And the entire settlement agreement is replete
4 with all of those references.

5 It says, in defining who the A.G. Group is, that
6 Orly Trust, in quote, "all her capacities." It doesn't
7 say in her individual capacity --

8 THE COURT: What about the second agreement?
9 Are you focusing on the second?

10 MS. BACHMAN: I am looking at what I believe to
11 be the actual -- the CSA.

12 THE COURT: The one where there is a writing, "I
13 wrote in" or something.

14 MS. BACHMAN: Correct.

15 THE COURT: I'm on Page 1 of that.

16 MS. BACHMAN: I am actually looking at the
17 settlement agreement itself, what she actually did. On
18 Page 1 of that settlement agreement, it says -- it
19 defines Orly as "Orly Genger in all capacities."

20 So, while they may be playing convenient word
21 games here -- I hope they are not -- but the settlement
22 agreement itself belies what I believe Mr. Griver is
23 trying to convince this Court of; that somehow there is
24 this distinction, this magical distinction that he is
25 now conveniently drawing which they weren't drawing in
26 the settlement agreement itself.

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2 THE COURT: Even assuming you are right, which I
3 am not sure you are, but assuming you are right, so
4 what? If it was all settled, if two of the entities
5 settled in one way or the other and then Dalia went
6 down and settled with the Trump Group and TPR in
7 Delaware, what's left and why is there something left?
8 That's what I want to know.

9 MS. BACHMAN: At least as I understand the
10 context of the Delaware settlement, it was motivated --
11 and if you look at the confidential settlement
12 agreement, it calls for the settlement of that Delaware
13 case. It says go settle that case. Only --

14 THE COURT: It doesn't say go settle it. It
15 says something else; right?

16 MR. MONTCLARE: Cooperate.

17 MR. GRIVER: Cooperate.

18 MS. BACHMAN: It says Only will cause.

19 THE COURT: Cause.

20 MR. GRIVER: No, Only will take efforts to
21 cause.

22 THE COURT: Something like that. It's a little
23 squishy.

24 MS. BACHMAN: A little squishy, but the concept
25 is clearly there. If he wants to look at the words,
26 which I think he had a part in drafting, that was idea.

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2 The idea was we're buying peace, as Mr. Allingham said.
3 We're doing the best we can. We don't want to hear
4 from you again. Go away and make sure, as best you
5 can, this all goes away.

6 THE COURT: So why is something left? That's
7 what I don't understand.

8 MS. BACHMAN: A, it's unclear if something is
9 left or not. But even if it's not, fine, they settled
10 those cases. They settled those claims and they got
11 paid for it. If she brought this case as a derivative
12 plaintiff and she got paid for her derivative claims,
13 it is black letter law that that money, those
14 settlement proceeds on behalf of the derivative
15 plaintiff go to the principal. They don't belong to
16 the individual.

17 THE COURT: Aren't you too late?

18 MS. BACHMAN: How so?

19 THE COURT: It settled.

20 MS. BACHMAN: But the payment hasn't been made
21 yet.

22 THE COURT: I don't know. It sounded like it
23 was. And does it matter? Does it matter that it
24 hasn't been paid? Even if it hasn't been, the
25 agreement has been entered, it's -- is there a judgment
26 or something?

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2 MR. ALLINGHAM: Your Honor entered a stipulation
3 of dismissal and we have paid \$17.25 million plus
4 interest and we are obligated on two more notes.

5 THE COURT: As he said, it sounds like that ship
6 has sailed.

7 MS. BACHMAN: There is \$15 million that they owe
8 to the settling parties. If you want to call that
9 spare change, I will take that change. That's fine.

10 Mr. Griver talked about the fact that these --
11 the cases that I cited talk about a future stream of
12 payment; right? He is talking about widows and orphans
13 getting paid in the future. That is, by definition,
14 what this is. We are talking about a future stream of
15 payment for claims that were settled. Yes, the claims
16 were settled. Mr. Allingham said repeatedly that he
17 bought peace. The Orly Trust settled its claims under
18 the settlement agreement. Otherwise, if -- as I
19 understand the Court's concern, if they settled the
20 claims, took all the money and we were not a party to
21 it, then they shouldn't have been in power to settle in
22 the first place. They can't have it both ways. They
23 can't settle the claims and take the money and then say
24 it's too late. Either they settled the derivative
25 claims and money belongs to the trust or they didn't
26 settle the claims and those claims are out there and we

1
2 have the right to pursue them.

3 THE COURT: I'll read your papers because I am
4 not quite sure I get it.

5 MR. GRIVER: Your Honor, just very quickly.
6 Notice that she talks about the complaint. She does
7 not talk about what happened in the settlement and she
8 misquotes the CSA. The CSA is executed by the A.G.
9 Group and the Trump Group. That's on Page 1.

10 Two defined groups: The A.G. group is
11 specifically defined to be Orly Genger in her
12 individual capacity and in her capacity as beneficiary
13 of the Orly Genger 1993 trust. The Orly Trust is
14 expressly excluded and on Page 3 is included with a
15 group called the Sagi Group which identifies the
16 nonsettling parties. It's very simple. There is an
17 entire agreement clause. We have to amend it only by a
18 writing signed by all of the parties, so that language
19 is what controls; not the complaint but the language of
20 the settlement.

21 The second amended stipulation of dismissal,
22 Ms. Bachman wasn't here jumping up and down and saying,
23 hey, I have to be part of this because it's settling
24 the Orly Trust shares. Instead, the Orly Trust was
25 specifically caretred out and, in fact, Dalia, on behalf
26 of the Orly Trust, supposedly as the trustee, then

1
2 later went down to Delaware. And she didn't say, hey,
3 you know what? Good news. All of my claims in this
4 case have been settled so see you later. Bye. She
5 went to the court and she said there is an existing
6 case, I have existing claims and here is the
7 settlement. And when Orly went down and tried to get
8 involved in that settlement, then Dalia and her counsel
9 said, no, didn't listen to what Orly had to say and
10 then settled it against Orly's desires.

11 So for her to say, well, there is a provision
12 that says that Orly should attempt to get the Orly
13 Trust to settle, Orly wasn't involved in the
14 settlement. She didn't cause the settlement in any
15 way, shape or form.

16 Please look at our papers and -- because our
17 papers are the only ones, the only ones to talk about
18 what actually happened; okay? The rest of it, what
19 Ms. Bachman is talking about, she is talking about the
20 first day of the Yom Kippur war. She knows the next
21 two weeks. They may win this case in Egypt. They will
22 not win in case before this Court.

23 MR. ALLINGHAM: Your Honor, may I?

24 THE COURT: If it's something you haven't
25 said --

26 MR. ALLINGHAM: It's not something I have not

1
2 said.

3 What emerges from all of the arguments is that
4 everyone agrees that no claims remain for Dalia to pick
5 up, so the motion for substitution should be denied.

6 I agree with Mr. Griver that the Orly Trust
7 settled with the Trumps at some point. He and I have a
8 disagreement about at what point. Actually, we don't
9 even have a disagreement about at what point. I
10 believe that the Orly Trust settled with the Trumps in
11 June in the settlement agreement. I believe that the
12 Orly Trust settled with the Trumps in August in
13 Delaware --

14 THE COURT: How can they do it twice?

15 MR. ALLINGHAM: Your Honor, if you were in my
16 position and you had been involved in this litigation
17 as long as --

18 THE COURT: I understand.

19 MR. ALLINGHAM: I was looking for the
20 Delaware --

21 THE COURT: It's belts and suspenders.

22 MR. ALLINGHAM: -- the Delaware guarantee with
23 respect to title. I was looking for whatever
24 protection I could get.

25 THE COURT: Okay.

26 MR. ALLINGHAM: Now, as to whether Orly could

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2 settle as a beneficiary of the Orly Trust or
3 derivatively on behalf of the Orly Trust, Justice
4 Feinman, on January 3rd, 2013, found that Orly had
5 derivative standing to bring claims on behalf of the
6 Orly Trust. I argued that she didn't. I lost.
7 Justice Feinman found that she did and that ruling is
8 law of the case.

9 Orly had derivative standing to bring claims on
10 behalf of the Orly Trust, according to Justice Feinman.
11 In what capacity? I can't think of any other -- there
12 may be someone, but I can't think of any other capacity
13 than as the beneficiary. So I believed in June that
14 when we said she is settling individually and as
15 beneficiary of the Orly Trust, I got a release of the
16 claims that were made against me derivatively by the
17 Orly Trust. But, as Mr. Griver says, in August we got
18 a release and dismissal from the Orly Trust in
19 Delaware.

20 THE COURT: Thank you.

21 MR. ALLINGHAM: What is clear, though, is that
22 we have a release and a dismissal of the Orly Trust
23 claims. Everyone seems to agree to that and there are
24 no claims pending here to substitute it.

25 THE COURT: So it seems, but I will read your
26 papers and I will keep an open mind and I will issue a

1
2 decision.

3 It's your motion, so you will upload this
4 transcript in the E-Filing system. I see I have a nice
5 file here. If I don't have hard copies of memos,
6 affirmations, affidavits, I need them all due on or
7 before April 8th. Exhibits can remain E-Filed.

8 Thank you.

9 MR. ALLINGHAM: Thank you, your Honor.

10 MR. DELLAPORTAS: Thank you, your Honor.

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12 CERTIFIED THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT
13 OF THE ORIGINAL STENOGRAPHIC MINUTES IN THIS CASE.

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15 ERIC ALLEN
16 SENIOR COURT REPORTER
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Eric Allen
Official Court Reporter